

File Number
CP04-019

Application Type
Conditional Use Permit

Council District
9

Planning Area
Cambrian/Pioneer

Assessor's Parcel Number(s)
569-21-056

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Suparna Saha

Location: Between Joseph and Howes Lanes opposite Ballantree Way

Gross Acreage: 1.93

Net Acreage: 1.93

Net Density: n/a

Existing Zoning: R-1-8 Residence

Existing Use: Utility Structure with Wireless Communications Facility

Proposed Zoning: No change

Proposed Use: Conditional Use Permit to allow three (3) wireless communication antennas (existing 12 to be removed) mounted atop an existing 102-foot tall PG&E utility structure and associated 150 square foot equipment shelter on a 1.93-acre site.

GENERAL PLAN

Completed by: SS

Land Use/Transportation Diagram Designation
Medium Low Density Residential (8.0 DU/AC)

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: SS

North: Single Family Residential/public-utility corridor

R-1-8 Single Family Residence

East: Single Family Residential

R-1-8 Single Family Residence

South: Single Family Residential/public-utility corridor

R-1-8 Single Family Residence

West: Single Family Residential

R-1-8 Single Family Residence

ENVIRONMENTAL STATUS

Completed by: SS

☐ Environmental Impact Report adopted
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: SS

Annexation Title: Kooser No. 6

Date: August 07, 1959

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval
☐ Approval with Conditions
☐ Denial
☐ Uphold Director's Decision

Date: _____

Approved by: _____
☒ Action
☐ Recommendation

CONTACT

Peacock Associates
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5855 Doyle Drive, Suite 108
Emeryville, CA 94608

APPLICANT/OWNER

PG&E
Attn: Robert E. Schlegel
P.O Box 770000
San Francisco, CA 94177-0001

PUBLIC AGENCY COMMENTS RECEIVEDCompleted by: SS

Fire Department

Memorandum Attached

Other Departments and Agencies

None.

GENERAL CORRESPONDENCE

None.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant MetroPCS is requesting a Conditional Use Permit to allow the installation of three wireless communication antennas mounted atop an existing PG&E transmission tower approximately 99-feet in height, and the placement of an 150 square-foot equipment shelter directly beneath the tower within the PG&E right-of way. The Zoning Ordinance requires a Conditional Use Permit for wireless communication antennas in the R-1-8 Residence Zoning District.

Currently the PG&E tower has 12 inoperative, defunct antennas and an equipment shelter enclosed by a fence. The proposed project entails the removal of all defunct antennas and equipment cabinets and replacement of them with 3 panel antennas and associated equipment cabinets to be located in the fenced compound that already exists at the site.

In 1996, San José planning staff explored the issues of electromagnetic radiation to determine if emissions from the proposed antennas posed a public health hazard. Staff found that the low-frequency, low energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined the reported interference resulted from cordless telephones and not from antennas.

Project Description

The proposed project consists of the installation of three wireless communication antennas on an existing PG&E transmission tower approximately 99-feet in height. The proposed antennas will be installed at the top of the tower and will have a maximum height of approximately 102 feet. Each antenna panel measures approximately 56"x 8"x 2.7" (LxWxD). A 150 square-foot equipment shelter will be located in the fenced compound that already exists directly below the PG&E lattice tower. Coaxial cables, routed down the tower to an underground conduit will connect the antennas to the equipment within the shelter.

The site is located within an 80-foot wide PG&E right-of-way on the north side of Tobias Drive between the rear yards of single-family residences fronting on Joseph and Howes Lanes. It is bound by single-family detached residential uses and other PG&E transmission towers within the PG&E corridor to the north and south. Single-family detached residences are also located to the east and west.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act, in that the project consists of a minor alteration to an existing facility involving a negligible expansion of use.

GENERAL PLAN CONFORMANCE

The subject site is designated Medium Low Density Residential (8 DU/AC) on the San José 2020 General Plan Land Use/Transportation Diagram. The proposed project conforms to the General Plan in that the 1.93 gross acre site contains an existing public utility facility and any developed parcel of two acres or less is deemed to conform to the General Plan regardless of how it is designated on the Land Use/Transportation Diagram. The subject site is deemed to be a Public/Quasi Public Use.

ANALYSIS

The primary issue analyzed is conformance with Council Policy 6-20, *Land Use Policy* for Wireless Communications Antennas, which provides criteria for siting such facilities including location, setbacks from residential uses

City Council Policy (6-20): Land Use Policy for Wireless Communication Facilities

The proposed project complies with the *Council's Land Use Policy for Wireless Communication Facilities*. The Policy recognizes the importance of wireless communication facilities, but also the potential for related land use impacts, including visual clutter. The *Land Use Policy for Wireless Communication Facilities* was revised in September 2003, to include siting criteria for wireless antennas that are mounted on utility structures. These types of installations are identified as a way to reduce the overall visual impact of the development of the wireless antenna networks in San José.

The Policy generally discourages wireless communications facilities from properties with residential land use designations except Residential Support for the Core, High-Density Residential, or Transit Corridor Residential. Although the site is designated for single-family residential, the project conforms to the General Plan because the 1.93 gross acre site contains an existing public utility tower with an existing wireless communication facility. Therefore, the proposed project will be relocated on residentially-designated property solely developed for non-residential uses, public utilities. The Council Policy allows communication antennas and associated equipment on an existing PG&E tower within a corridor for high-tension lines exceeding 220 kilovolts thus being consistent with Council policy.

The Council Policy requires antennas mounted on utility structure within a utility corridor such as PG&E transmission tower be located at least 20-foot horizontally from single-family residential property line. The structure-mounted antennas are located approximately 29 and 39 feet horizontally from the westerly and easterly single-family property lines, consistent with Council Policy. The antennas will be located atop an existing PG&E tower approximately 99 feet tall. The proposed antennas will not exceed 102 feet in height, extending above the tower by approximately 3 feet. A photo simulation of the proposed antennas atop the existing PG&E tower has been provided to demonstrate the appearance of the antennas proposed on from off-site.

The placement of the proposed antennas at the top of an existing 99-foot tall PG&E tower provides additional vertical separation between the antennas and adjacent houses, which meets the intent of the Council Policy for appropriate residential separation. The proposed project will also reduce the need for additional building-mounted wireless antennas in the area that could less architecturally.

The Council Policy requires building-mounted or utility-mounted antennas to be located so as to minimize visual impacts and to be architecturally integrated into the structure. It also requires ancillary equipment to be screened. The proposed antennas are collocated on an existing PG&E tower that has existing overhead service lines. (see attached photo simulation). Although visible, the antennas will be painted to match the existing color of the utility tower and will not significantly add to the visual impacts created by the existing antennas, tower and overhead service lines on the site. In addition, their proposed project provides the opportunity for removal of outdated defunct equipment to be replaced with fewer antennas.

In conformance with the Policy, additional landscaping, including six 24" box trees, is being proposed to screen the visibility of the equipment enclosure from Tobias Drive.

PUBLIC OUTREACH

Notices of the public hearing were distributed to the owners and tenants of all properties located within 500 feet of the project site. Staff has been available to answer questions on the project from the public.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution:

Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Medium Low Density Residential (8 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. Although the site is designated for single-family residential, the project conforms to the General Plan because the 1.93-acre site contains an existing public utility structure. Further, any developed parcel of two acres or less is deemed to conform to the General Plan regardless of how it is designated on the Land Use/Transportation Diagram.
3. The project site is located in the R-1-8 Residence Zoning District.
4. The antennas are proposed atop an existing 99-foot steel utility line tower, and the overall height will not exceed 102 feet.
5. Three antennas are proposed instead of the twelve currently existing on the tower. The twelve existing antennas are to be removed from the PG&E tower.
6. The proposed antennas will have a minimum horizontal separation of 29 feet from the nearest residential property line.

7. The proposed antennas will have adequate horizontal separation from the nearest residential structure.
8. The antennas will be painted to match the existing structure to minimize the visual impacts created by existing utility poles and overhead service lines on the site. Additional landscaping is proposed to screen the visibility of the equipment enclosure from Tobias Drive.
9. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. Although the site is designated Medium Low Density Residential (8 DU/AC), the project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram in that the 1.93 acre site contains an existing public utility facility or structure. Any developed parcel of two acres or less is deemed to be in conformance with the General Plan regardless of how it is designated on the Land Use/Transportation Diagram.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project is consistent with City Council Policy 6-20: Land Use Policy for Wireless Communication Facilities.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and

- b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "PG&E Tobias Tower No. 9/49," dated 03/17/04 and last revised on July 9, 2004, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24).
2. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
4. **Lighting.** This permit allows no on-site lighting.
5. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
6. **Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set.

7. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
8. **Colors and Materials.** All structure colors and materials are to be those specified on the approved plan set.
9. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
10. **Discontinuation of Use.** Upon discontinuation of the use of the subject antennas, the applicant shall remove all antenna improvements associated with this permit within 30 days.
11. **Co-location.** The owner(s) and operators of the proposed antenna support structure shall allow the co-location of PSC antennas for other providers.
12. **Generators.** This permit does not include approval of emergency back-up generator on the subject site.
13. **Landscaping.** Provide landscaping, with six 24" box trees, to screen the visibility of the equipment enclosure from Tobias Drive.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

1. Peacock Associates, Attn: Mark Gagne, 5855 Doyle Drive, Suite 108, Emeryville, CA 94608
2. PG&E, Attn: Robert E. Schlegel, P.O. Box 770000, San Francisco, CA 94177-0001

Attachments

11